



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

First Appeal No. 1123 of 2023

i. Shweta D/o Nandlal Vishvakarma (Samina W/o Firoz Khan Pathan) and anr. **..vs..** Nil]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. S. Gawai, Advocate instructed by Mr. Shashibhushan Wahane,
Advocate for the appellants

CORAM : ANIL L. PANSARE J.

DATED : 07-02-2024

Heard.

2. The appellants are allegedly married couple. They are aggrieved by the judgment and decree dated 18-12-2021 passed by the Adhoc District Judge-1, Wardha in Special Marriage Petition No. 16/2020 thereby rejecting the petition filed under Section 28 of the Special Marriage Act, 1954 seeking divorce by mutual consent.

3. The trial Court, while rejecting the petition, has assigned following reasons.

“11] I have minutely gone through memorandum of marriage, in said memorandum of marriage nothing has been mentioned about performing marriage under Special Act or it is not issued under Special Marriage Act. Receipt dated 19.11.1996 which is placed on record shows that it is issued under १९५४ चा मुंबई विवाह नोंदणी अधिनियम पाच अन्वये. Thus, it appears that receipt also has not been issued under Special Marriage Act.

12] It is seen that petitioners have not furnished Marriage Certificate issued by the Competent Authority. Therefore, order passed below Exh. 1

and directed petitioners to furnish Marriage Certificate. Sufficient opportunity has also been given to petitioners to furnish the Marriage Certificate issued under Special Marriage Act, issued to the petitioners. Despite of the same, petitioners not turned before the Court to comply the same.

13] Chapter II of the Special Marriage Act, 1954 deals with solemnization of special marriages. In Section 4 of the Special Marriage Act conditions relating of to solemnization of Special Marriages are mentioned. As per Section 5 notice of intended marriage is mandatory provision. Petitioners have not mentioned whether they have filed application to the Marriage Officer about solemnizing of their marriage and whether such notice has been issued. After solemnization of marriage, the Marriage Officer shall enter a certificate thereof in the Form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.

14] I have also noticed that petitioners have not furnished certificate of marriage as per the Fourth Schedule. This aspect clearly shows that petitioners have not proved that they had performed marriage under Special Marriage Act. Therefore, I answer to Point No. 1 in negative.”

4. I have with the assistance of learned counsel for the appellants gone through the provisions of Special Marriage Act, 1954. Section 4 provides for conditions relating to solemnization of special marriages. Section 5 requires issuance of notice of intended marriage to be given to the Marriage Officer of the district in which at

least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given. Section 6 provides for keeping record of such notices. Section 7 provides for objection to the marriage. Section 8 deals with procedure on receipt of objections. Section 9 provides for powers of Marriage Officers in respect of inquiries to be made under Section 8. Section 12 provides for place and form of solemnization. Section 13 provides for certificate of marriage. Sections 15 and 16 deals with registration of marriages celebrated in other forms and procedure for registration.

5. There are then provisions for void marriages and voidable marriages. Section 28, under which petition has been filed, provides for divorce by mutual consent. It *inter alia* provides that upon filing the petition, the Court shall, on being satisfied, after hearing the parties and after making appropriate inquiry that a marriage has been solemnized under this Act, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

6. The trial Court noted that the petitioners failed to submit marriage certificate under Special Marriage Act despite giving sufficient opportunity. The Court also noted that there is no compliance of Sections 4 and 5, which is mandatory. Accordingly, the trial Court came to the conclusion that the petitioners have not proved that they have performed marriage under Special Marriage Act and refused to grant divorce by mutual consent.

7. Having considered the provisions of the Special Marriage Act, 1954, I do not find any illegality committed by the Court below. There is no merit in the appeal and the same is accordingly dismissed *in limine*.

(Anil L. Pansare, J.)

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